

JUN 18 1972

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code.

The information submitted indicates that you were incorporated on [REDACTED] in the State of [REDACTED] as a nonprofit corporation. According to Article III of your articles, your purpose is to:

- (a) Maintain a payroll account for individuals employed in the theatrical, motion picture and exhibition industry;
- (b) Receive or raise funds through dues, solicitation, borrowing, or by gifts, legacies, devices, or any other lawful means to accomplish the purpose of your corporation;
- (c) Borrow money and to issue notes and other evidence of indebtedness and obligations from time to time for any lawful purpose, and to mortgage, pledge, and otherwise charge any or all of the properties, rights, privileges and assets to secure the payment thereof to accomplish your purposes.

According to your 1023 application:

Your source of support is administrative overhead on payrolls;

You will distribute the net profit to [REDACTED];

Your statement of revenue and expenses shows the following sources of support:

Membership fees (■ percent of support in ■)  
Investment income (■ percent of support in ■)  
Other income (■ percent of support in ■)  
Gross receipts from admissions, sales of merchandise or services  
(■ percent of support in ■);

Code	Initiator	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer
Surname	[REDACTED]						
Date	6/18/92						

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Salaries and wages - \$[redacted] in [redacted], which is [redacted] percent of your total expenses in [redacted];

Donations - \$[redacted] in [redacted], which is [redacted] percent of your expenses;

You had an overall loss of \$[redacted] in [redacted];

You had losses in [redacted], [redacted] and [redacted] which is before you incorporated

According to your correspondence dated [redacted], your 501(c)(3) activities are your profits which are put into a scholarship fund. These profits are earned from the people who work at the shows and concerts. Your payroll service was organized when the union members and permit card holders had to take over the service when the original sponsor pulled out.

The correspondence dated [redacted] also states that:

Your intention was "...to keep these people working."

Your financial support is arrived at by charging [redacted] percent above the payroll incurred. Shows/concerts are charged the payroll incurred plus [redacted] percent, which is added to cover the administrative expenses, taxes and any other charges that might come up.

There are approximately [redacted] employees who are members of your organization. Their union supplies the manpower, and you work with the show sponsors to obtain the workers needed.

Only [redacted] members are paid a salary to administer your activities.

Section 501(c) of the Code describes certain organizations exempt from Federal income tax under section 501(a) and reads, in part, as follows:

"(3) Corporations, \*\*\* fund, or foundation, organized and operated exclusively for religious, charitable, scientific, \*\*\* literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involved the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office."

Section 1.501(c)(3)-1(b)(1)(i) of the Income Tax Regulations provides that an organization is organized exclusively for one or more exempt purposes only if its Articles of Organization -

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"(A) Limit the purposes of such organization to one or more exempt purposes, and

(B) Do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes."

Section 1.501(c)(3)-1(c)(1) of the Income Tax Regulations provides that:

"An organization will be regarded as 'operated exclusively' for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3)..."

Section 1.501(c)(3)-1(d)(1)(ii) of the Income Tax Regulations provides that all the organizations there described must serve a public rather than a private interest.

Section 1.501(c)(3)-1 of the regulations provides, in part, as follows:

"(a)(1) In order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt."

"(1)(2) Charitable defined. The term "charitable" is used in section 501(c)(3) in its generally accepted legal sense and is, therefore, not to be construed as limited by the separate enumeration in section 501(c)(3) of other tax exempt purposes which may fall within the broad outlines of "charity" as developed by judicial decisions. Such term includes: Relief of the poor and distressed or of the underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments, or works; lessening of the burdens of Government; and promotion of social welfare by organizations designed to accomplish any of the above purposes, or (i) to lessen neighborhood tensions; (ii) to eliminate prejudice and discrimination; (iii) to defend human and civil rights secured by law; or (iv) to combat community deterioration and juvenile delinquency."

Section 1.501(c)(3)-1(e) of the Income Tax Regulations states in part that an organization which is organized and operated for the primary purpose of carrying on an unrelated trade or business is not exempt under section 501(c)(3) even though it has certain religious purposes, its property is held in common, and its profits do not inure to the benefit of individual members of the organization.

Section 502(a) of the Internal Revenue Code states that an organization operated for the primary purpose of carrying on a trade or business for profit shall not be exempt from taxation under section 501 on the ground

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that all of its profits are payable to one or more organizations exempt from taxation under section 501.

Section 1.502-1(a) of the Income Tax Regulations states that in the case of an organization operated for the primary purpose of carrying on a trade or business for profit, exemption is not allowed under section 501 on the ground that all the profits of such organization are payable to one or more organizations exempt from taxation under section 501. It goes on to state that in determining the primary purpose of an organization, all the circumstances must be considered, including the size and extent of the trade or business and the size and extent of those activities of such organization which are specified in the applicable paragraph of section 501.

According to the Revenue Ruling 73-164, 1973-1 C.B. 223, a church-controlled commercial printing corporation whose business earnings are paid periodically to the church, but which has no other significant charitable activities, is a feeder organization as described in section 502 of the Code and does not qualify for exemption under section 501(c)(3).

In the court case Help the Children, Inc. vs. Commissioner, 39 TC 1118 (1963), a nonprofit organization conducted bingo games to carry on its charitable purpose. Its charitable purpose was the distribution of funds to charity. The organization distributed 0.19 percent of its gross revenue to charitable organizations in one year, and 0.45 percent the next year. The court held that the organization was not entitled to IRC exemption since it did not operate any charitable activities and its primary activity was the profitable operation of bingo games on a business or commercial basis.

You do not meet the organizational requirements for exemption under section 501(c)(3). You are organized to maintain a payroll account. This is not a religious, charitable, scientific, testing for public safety, literary, or educational purpose.

You do not meet the requirements for exemption under section 501(c)(6) since you are operated for the primary purpose of carrying on an unrelated trade or business.

You are similar to the organization described in the court case Help the Children, Inc. vs. Commissioner. The organization in that case distributed 0.19 percent and 0.45 percent of its gross revenue to charitable organizations. You distributed [redacted] percent of your revenue. This contributed amount is not comparable with the amounts in the court case.

You are a feeder organization as described in section 502 of the Code, similar to the organization described in the Revenue Ruling 73-164.

Accordingly, it is held that you are not entitled to exemption from Federal income tax as an organization described in section 501(c)(3) of the Code, and you are required to file Federal income tax returns on Form 1120.

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Contributions to you are not deductible to you under section 170(c).

If you do not agree with these conclusions, you may, within 30 days from the date of this letter, file in duplicate a brief of the facts, law, and argument that clearly sets forth your position. If you desire an oral discussion of the issue, please indicate this in your protest. The enclosed Publication 892 gives instructions for filing a protest.

If you do not file a protest with this office within 30 days of the date of this report or letter, this proposed determination will become final.

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides in part that, "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Court of Claims, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If this determination letter becomes a final determination, we will notify the appropriate State officials, as required by section 6104(c) of the Code, that based on the information we have, we are unable to recognize you as an organization of the type described in Code section 501(c)(3).

If you do not protest this proposed determination, the Internal Revenue Service that you have not exhausted administrative remedies to secure the determination. Under section 7428(b)(2) of the Internal Revenue Code, not taking all reasonable steps to exhaust administrative remedies to secure the determination may be considered a failure to exhaust administrative remedies available to you within the Internal Revenue Service, and may preclude the issuance of a declaratory judgment in the event of judicial proceedings.

If you agree with these conclusions and do not wish to file a protest, please sign and return Form 6018, Declaration of Non-Protest, in the enclosed envelope as soon as possible.

If you have any further questions, please contact the office by mail or telephone. Telephone numbers are shown on the back of this letter.

Enclosure:  
Publication 892  
Form 6018  
Envelope